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Mailed:
March 24, 2003

Paper No. 9
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sport Obermeyer, Ltd.

Serial No. 76/128,251

Robert E. Purcell of Wall Marjama & Bilinski LLP for Sport Obermeyer, Ltd.

Teresa Rupp, Senior Trademark Attorney, Law Office 106
(Mary Sparrow, Managing Attorney).

Before Simms, Bottorff and Rogers, Administrative Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark C.O.R.E. (in typed form) for goods identified

in the application as "clothing, namely, gloves, hats, vests, suits, shells, pants, jackets and headbands."¹

The Senior Trademark Attorney has issued a final refusal of registration on the ground that applicant's mark, as applied to applicant's goods, so resembles the mark CORE CLOTHING, previously registered on the Principal Register (in typed form, CLOTHING disclaimed) for "clothing, namely, bicycle pants, shorts, jerseys, over-shirts, T-shirts, jackets, pants, tops, vests, and liners for pants, jerseys and shorts,"² as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant has appealed the final refusal. Applicant and the Senior Trademark Attorney have filed main appeal briefs, but applicant did not file a reply brief and did not request an oral hearing. We affirm the refusal to register.

The evidence of record on appeal (all of which was submitted by applicant) consists of (a) printouts of eleven previously-issued registrations (including the registration cited as a Section 2(d) bar in this case) of marks which

¹ Serial No. 76/128,251, filed September 13, 2000. The application is based on intent to use, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² Registration No. 2,293,887, issued November 23, 1999.

include CORE for goods in the clothing field;³ (b) excerpts from catalogs of two of applicant's competitors (Columbia

³ Applicant discussed these registered marks in its responses to Office actions, but did not submit copies of printouts for the registrations until they were attached as exhibits to applicant's appeal brief. However, because the Senior Trademark Attorney has treated the registrations as being properly of record on appeal, we shall do so as well. We have considered these registrations only insofar as they might show, in the manner of dictionary evidence, the meaning of the term CORE as it appears in the registered marks. See, e.g., *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976). The third-party registrations are summarized as follows:

Reg. No. 1,344,591 (registered pursuant to Section 44), of the mark HARD CORE for "casual wear clothing, namely, jeans, jackets and shirts."

Reg. No. 2,389,361 (registered pursuant to Section 44 and owned by the same registrant that owns Reg. No. 1,344,591, *supra*), of the mark HARD CORE for "sports wear, clothing, namely, shirts, shorts, T-shirts, sweatshirts, track suits, baseball caps, cycle shorts, ankle and knee length sports socks, football jerseys, rugby jerseys, running shorts and vests, football boots, rugby boots, running shoes and walking boots";

Reg. No. 2,422,639, of the mark CORE SPORT (SPORT disclaimed) for "sportswear, namely, shirts, shorts, baseball caps, sweat pants, sweat shirts, sweat bands";

Reg. No. 2,106,026, of the mark CORE AMERICA (AMERICA disclaimed) for "clothing, namely, t-shirts";

Reg. No. 2,355,064, of the mark GOLD CORE TECHNOLOGY (GOLD and TECHNOLOGY disclaimed) for "elastomeric material sold as a component of watersports apparel";

Reg. No. 2,349,146 (Supplemental Register), of the mark CORE VENT (VENT disclaimed) for "apparel, namely, jackets, coats, and tops containing zippered areas on each side of the garment, which may be unzipped to allow ventilation of air away from the torso to avoid overheating";

Reg. No. 2,293,887 (of the mark CORE CLOTHING, the registration cited as a Section 2(d) bar in this case);

Sportswear Company and Rotor-Sports);⁴ and (c) copies of six patents which, applicant contends, establish that the term "core," in the clothing industry, is merely descriptive in that it "indicates that a garment or clothing product is fashioned from a thermoplastic fiber having a core."

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the

Reg. No. 2,018,376, of the mark CORE CONCEPTS for "men's, women's, and children's clothing, namely shirts, pants, shorts and beachwear";

Reg. No. 1,908,568 (now cancelled), of the mark DRI-CORE and design for "sportswear, namely, jackets for hunting, fishing, skiing, kayaking, sailing and diving";

Reg. No. 1,689,603, of the mark CORE TEMP for "men's, women's and children's clothing, namely, neoprene tops and bottoms"; and

Reg. No. 1,754,536, of the mark MORE CORE DIVISION for "clothing; namely, men's, ladies' and children's shirts, tops, T-shirts, pants, jackets, sweatshirts, sweatpants, tank tops, sweaters, shorts, swimwear, skirts and footwear."

⁴ The excerpts from the Columbia Sportswear Company catalog appear to be the introductory pages to sections of the catalog, which bear the designations "Men's Core" and "Women's Core" in their headings. The excerpts from the Rotor Sports catalog consist of two pages featuring skiing apparel items. The pages bear the headings "CORE SERIES" and "CORE INSULATOR," and the first page includes following text under a photograph of the product:

CORE INSULATOR JACKET: We have learned from years of skiing and mountain living that layering is the only way to go if you want to stay comfortable out in the elements all day. A good insulating layer works well by itself, but when paired with one of our shells, it provides the necessary core insulation you need on the coldest days of winter.

probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We find that applicant's goods, as identified in the application, are identical in part and otherwise are closely related to the goods identified in the cited registration; that these types of goods are or would be marketed in the same trade channels and to the same classes of purchasers, including to ordinary consumers; and that these types of goods are not necessarily expensive and not necessarily purchased with a high degree of care. Thus, the second, third and fourth *du Pont* factors weigh in favor of a finding of likelihood of confusion in this case. Applicant has not contended otherwise.

We next must determine whether applicant's mark and the cited registered mark, when compared in their entireties in terms of appearance, sound and connotation,

are similar or dissimilar in their overall commercial impressions. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Finally, where, as in the present case, the marks would appear on virtually identical goods, the degree of similarity between the marks which is necessary to support a finding of likely confusion declines. See *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Applying these principles in the present case, we find that applicant's mark and the cited registered mark are

sufficiently similar that confusion is likely to result from use of the marks on the identical and/or closely related goods involved here.

Initially, we are not persuaded by applicant's argument that the word CORE is a merely descriptive term in the clothing industry which "should be given virtually no weight whatsoever" in our comparison of the marks. Specifically, we are not persuaded by applicant's argument that, to purchasers of clothing, the term CORE "indicates that a garment or clothing product is fashioned from a thermoplastic fiber having a core." Even assuming *arguendo* that the patent documents submitted by applicant (see *supra* at page 4) show that "core" has this meaning in the thermoplastic fiber or nonwoven fabric industries, there is no basis in the record for finding that purchasers of the clothing items at issue in this case would be aware of such meaning, or that they would attribute that meaning to finished clothing items.

Nor does the catalog and third-party registration evidence submitted by applicant (see *supra* at footnotes 3 and 4) show use of CORE to refer descriptively to thermoplastic fibers, as argued by applicant. First, the "thermoplastic fiber" significance of CORE for which applicant argues appears to be inapposite to the extent

that many of the clothing items identified in these third-party registrations typically are fashioned not from nonwoven fabrics which might employ such fibers but rather from woven fabrics like cotton. Second, some of the third-party registrations clearly use the term CORE in an arbitrary manner or as part of a unitary phrase, i.e., HARD CORE or MORE CORE DIVISION, which has nothing to do with thermoplastic fibers. Finally, to the extent that the catalog evidence and other of the third-party registrations shed any light at all on the meaning of the term CORE as applied to clothing items, the meaning appears to be suggestive, not descriptive. That is, in the context of clothing worn for skiing or other active sports, CORE appears to be suggestive of one's body or torso as one's "core" which is insulated by means of layering one's clothing. Alternatively, the term as used in some of the registered marks also appears to suggest that the clothing items sold under the marks are designed to be basic, essential or core elements of one's wardrobe.

In short, we find that the term CORE, as applied to clothing items, is not merely descriptive as argued by applicant. Rather, it is at least suggestive, and only vaguely suggestive at that, in view of the fact that it may have several meanings rather than any single, readily

recognizable suggestive meaning. Thus, we reject applicant's contention that we should accord little or no weight (in our comparison of the marks) to the fact that the word CORE appears in both marks. Rather, we find that CORE is a significant, indeed dominant, feature in the commercial impression created by each of the marks. It clearly is the dominant feature in the cited registered mark, given the generic nature of the disclaimed word CLOTHING. The word CORE likewise is a significant feature of the commercial impression of applicant's mark because, notwithstanding the presence of the periods between the letters in the mark, the word that the letters form is readily recognizable as the word CORE.

We turn now to our comparison of the marks. The marks are not identical in terms of appearance, because the registered mark (but not applicant's mark) includes the word CLOTHING and because applicant's mark (but not the registered mark) includes periods between the letters of the word CORE. However, the marks look similar to the extent that the word CORE can be seen in both marks. On balance, and given the greater weight to be accorded to the word CORE as the dominant feature of the marks, we find that the marks are more similar than dissimilar in terms of appearance when they are viewed in their entireties.

In terms of sound, the registered mark differs from applicant's mark to the extent that it includes the generic word CLOTHING in addition to the word CORE. Also, the periods appearing in applicant's mark might lead purchasers to pronounce applicant's mark like an initialism, i.e., with each letter of the word CORE pronounced separately. Despite the periods, however, applicant's mark clearly looks like the word CORE and reasonably might be pronounced as such, and to that extent applicant's mark and the CORE portion of registrant's mark could be pronounced identically. There is no "correct" pronunciation of trademarks. See generally *Kabushiki Kaisha Hattori Tokeiten v. Scuoitto*, 228 USPQ 461 (TTAB 1985). See also *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 USPQ2d 1719 (Nies, J., dissenting).⁵ On balance, we find that the marks are more similar than dissimilar in terms of sound.

In terms of connotation, we find that applicant's mark and registrant's mark have the same connotation as applied

⁵ Of particular note is Judge Nies' observation, at 6 USPQ2d 1722-23, that "...applicant argues, and the majority agrees, that purchasers will pronounce B.A.D. as the word 'BAD'. There is no evidence how the public articulates B.A.D. Indeed, no evidence exists indicating how applicant itself pronounces its mark, whether as initials or as a word. Thus, under our precedent, it must be presumed that the mark will be pronounced either as initials or as a word."

to clothing items to the extent that both marks would be perceived to include or consist of the word CORE. That is, whatever the term connotes in the cited registered mark, either as an arbitrary term or as suggestive of "innermost layer" or "essential wardrobe element," it would have the same connotation in applicant's mark. Moreover, the presence of the generic word CLOTHING in the cited registered mark does not affect the connotation of that mark, nor does the absence of that generic word from applicant's mark affect the connotation of applicant's mark. Finally, although the presence of the periods in applicant's mark make the mark look like an initialism as well as like the word CORE, there is nothing in the record which shows what the initialism stands for, or that it stands for anything at all, aside from the word CORE. Because the initialism, per se, has no apparent separate meaning as applied to applicant's goods, purchasers attempting to understand what the mark means are likely to look to the meaning of the readily recognizable word formed by the letters in the mark, i.e., CORE, as that word is applied to clothing items. That meaning is the same in both applicant's mark and in registrant's mark.

In summary, we find that when the marks are viewed in their entireties, they are more similar than dissimilar in

their overall commercial impressions. The similarity which results from the dominance in both marks of the inherently distinctive term CORE outweighs the points of dissimilarity between the marks, i.e., the presence in the registered mark (but not applicant's mark) of the generic word CLOTHING and the presence in applicant's mark (but not the registered mark) of the periods between the letters of the word CORE. Keeping in mind that the degree of similarity between the marks which is necessary to support a finding of likelihood of confusion is diminished when the goods upon which the marks are to be used are identical (as they are in this case, in part), we find that applicant's mark is sufficiently similar to the cited registered mark that a likelihood of confusion exists. Any doubts as to that conclusion must be resolved against applicant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.